INDEX.

	PAGE
Opinion Below	1
Jurisdiction	2
Questions Presented	2
Constitutional and Statutory Provisions Involved	2
Statement	2
Argument	3
Conclusion	7

CITATION OF AUTHORITIES

American Power Co. v. *Securities & Exchange Commission*, 329 U.S. 90 (1946)	4
Bush v. *Texas*, 372 U.S. 586, 590 (1963)	5
Coe v. *Armour Fertilizer Works*, 237 U.S. 413 (1915)	4
Endicott Johnson Corp. v. *Perkins*, 317 U.S. 501, 509, 510 (1943)	6
Farncomb v. *Denver*, 252 U.S. 7, 10 (1920)	5
Fox v. *Washington*, 236 U.S. 273, 277 (1915)	5
Knox v. *Summers*, 7 U.S. (3 Cranch) 496 (1806)	5
Lynch v. *Oversolser*, 369 U.S. 705, 711 (1962)	3
Oklahoma Press Pub. Co. v. *Walling*, 327 U.S. 186, 213 (1946)	6
Poulos v. *New Hampshire*, 345 U.S. 395, 402 (1953)	5
Saint Louis & San Francisco Co. v. *McBride*, 141 U.S. 127, 130 (1891)	5
Southern Ry. Co. v. *Virginia*, 290 U.S. 190 (1933)	4
United States v. *National Dairy Products Corp.*, 372 U.S. 29, 32 (1963)	3
United States v. *Powell*, 379 U.S. 48, 54 (1964)	6
Western Loan Co. v. *Butte & Boston Min. Co.*, 210 U.S. 368, 372 (1907)	5

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1967

NO. 293

FIORE BUCCIERI, FRANK BUCCIERI, CHRIS CARDI, DOMINICK CARZOLI, ARTHUR COWAN, JOSEPH GAGLIANO, JOSEPH GRIECO, PETER ORI, LENNY PATRICK, ALBERT SARNO, PATSY RICCIARDI and ANTHONY SPILOTRO,

Petitioners,

vs.

ILLINOIS CRIME INVESTIGATING COMMISSION,

Respondent.

(On Petition for a Writ of *Certiorari* to the Supreme Court of Illinois.)

BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion is correctly printed as an Appendix to the Petition for Writ of Certiorari.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED

1) Whether it was incorrect for the Illinois Supreme Court to construe a state statute so as to avoid substantial doubts about the statute's constitutionality, by holding that the provisions thereof necessarily contemplated due notice and a hearing.

2) Whether defendants who appear generally before a court can thereafter contest the sufficiency of the notice given them.

3) Whether individuals, who have refused to honor administrative subpoenas, have a constitutional right to unlimited judicial review at the time when application is made for court enforcement of the subpoenas.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

These are adequately set forth in the Petition.

STATEMENT

Even though the petitioners' Statement of Facts is adequate, the Respondents would point out that the petitioners' "Motion to dismiss Action and strike Complaint" contained (in addition to those portions set forth in the Petition) challenges to the Commission's authority for bringing the enforcement action; challenges to the legal sufficiency of the resolution authorizing the hear-

ings; challenges to the Commission's authority to enact the resolution; challenges as to the effectiveness of the subpoenas; and a challenge as to the legal sufficiency of the petition seeking court enforcement of the subpoenas.

Many of these contentions were considered by the Illinois Supreme Court.

THE DECISION OF THE ILLINOIS SUPREME COURT IS CONSISTENT WITH APPLICABLE DECISIONS OF THIS COURT, AND NO NEW AND SUBSTANTIAL FEDERAL QUESTIONS ARE INVOLVED THEREIN.

Although the petitioners attempt to raise speculative and anticipatory questions, the decision of the Illinois Supreme Court stands for only three simple and well-settled propositions. Each of these three points will be discussed separately, with citation of cases wherein this Court has held similarly.

Point Decided: Fundamental rules of statutory construction require a holding that the Illinois Legislature, in enacting Section 13, necessarily contemplated and intended that orders to compel obedience to subpoenas issued by the Illinois Crime Commission could only be issued upon due notice and a hearing. (Petition, App. 4)

The decision by the Illinois Supreme Court is consistent with this Court's mandate that a statute should be interpreted in such a way as to free it from substantial constitutional doubts. [*E.g., Lynch* v. *Overholser,* 369 U.S. 705, 711 (1962)], and this Court itself has consistently sought interpretations which support the constitutionality of legislation. [*E.g., United States* v. *National Dairy Products Corp.,* 372 U.S. 29, 32 (1963)]. Further-

more, this Court has also read a statute as requiring notice although no such notice was expressly provided for, [See *American Power Co.* v. *Securities & Exchange Commission,* 329 U.S. 90 (1946)] The language contained in that opinion is directly applicable here:

> "Equally groundless is the contention that § 11 (b) (2) [of the Public Utility Holding Company Act] is void in the absence of an express provision for notice and opportunity for hearing as to security holders regarding proceedings under that section.
>
> • • • • • •
>
> "That the statute does not expressly insist upon what in fact has been given the security holders is without constitutional relevance under these circumstances. Whenever possible, statutes must be interpreted in accordance with constitutional principles. Here, in the absence of definite contrary indications, it is fair to assume that Congress desired that § 11 (b) (2) be lawfully executed by giving appropriate notice and opportunity for hearing to all those constitutionally entitled thereto." (Id. at 107, 108)

The petitioners apparently do not quarrel with the rule enunciated by the Illinois Supreme Court, *i.e.,* that due process requires that they be given notice and a hearing, but they ask this Court to hold that such a requirement must be express in the statute. No decisions of this Court justify petitioners' request.

In both *Southern Ry. Co.* v. *Virginia* (290 U.S. 190) and in *Coe* v. *Armour Fertilizer Works* (237 U.S. 413), which are cited by the petitioners, the state courts had held that the statutes construed did not require notice and an opportunity to be heard. By way of comparison, the Illinois Supreme Court has recognized that such are essential. This interpretation of the Illinois statute by the highest state court is as though written into the ordinance

itself. [*Poulos* v. *New Hampshire,* 345 U.S. 395, 402 (1953)]. Moreover, when this Court is dealing with the constitutionality of state statutes challenged under the 14th Amendment, it generally accepts the meaning thereof as construed by the highest state court. [*Farncomb* v. *Denver,* 252 U.S. 7, 10 (1920)] Under such circumstances, where the state court has recognized the requirements of due process, and where there is only a dispute over the court's technique of statutory construction, a grant of *certiorari* is not warranted.

Point Decided: By making a general appearance, defendants submitted to the jurisdiction of the court and waived the adequacy of the notice served upon them.

The ruling is again consistent with decisions of this Court, which since 1806 has uniformly held that when an individual appears generally before a court (for example, by contesting the sufficiency of the complaint), he waives all defects in service. [*E.g., Western Loan Co.* v. *Butte & Boston Min. Co.,* 210 U.S. 368, 372 (1907); *St. Louis & San Francisco Co.* v. *McBride,* 141 U.S. 127, 130 (1891); *Knox* v. *Summers,* 7 U.S. (3 Cranch) 496 (1806).]. While the petitioners raise the question of the sufficiency of mailed notice, the Illinois Supreme Court specifically said that "we do not reach that point in this case." (App. 4) The issue of the sufficiency of mailed notice and the other similar issues which the petitioners attempt to raise are speculative and anticipatory, and this Court has repeatedly declined to anticipate a question of constitutional law in advance of the necessity of deciding it. [*E.g., Bush* v. *Texas,* 372 U.S. 586, 590 (1963)] Moreover, this Court will not presume that the state court will construe and interpret statutes in an unconstitutional manner. [Cf. *Fox* v. *Washington,* 236 U.S. 273, 277 (1915)] In light of the foregoing principles, *certiorari* would not be warranted.

Point Decided: Judicial review of administrative subpoenas is limited to a consideration of the constitutionality of the statute, whether the contemplated agency proceedings are included within the statutory authority, the reasonableness of the demand and the relevancy of the information sought. (Petition, App. 5)

This ruling is based on decisions of this Court, and is in accord with the policy expressed in those cases—that although constitutional rights must be protected, an agency should not be hampered and forced to spend extensive time litigating in the courts before it can even commence the investigation. [See *United States* v. *Powell,* 379 U.S. 48, 54 (1964); *Oklahoma Press Pub. Co.* v. *Walling,* 327 U.S. 186, 213 (1946); *Endicott Johnson Corp.* v. *Perkins,* 317 U.S. 501, 509, 510 (1943)]. In the case at bar, the petitioners filed a motion to dismiss and, in the alternative, to strike the complaint in the trial court. In support of this motion, they relied upon (counting points and subpoints) twenty-three grounds. (Petitioners' Brief in Illinois Supreme Court, pp. 12-16) Eight of these grounds related to various alleged defects in the subpoenas. The most important of petitioners' contentions, including several challenges to the subpoenas, were considered by the Illinois Supreme Court, as falling within the permissive scope of judicial review. None of the matters now mentioned in the Petition, however, were included in that Motion, for possible consideration. No decision cited by petitioners gives them the right to thereafter raise such matters, nor does any constitutional provision give them the right to dictate the time of ju-

dicial review. The scope of review authorized by the Illinois Supreme Court protects petitioners' constitutional rights while it avoids unnecessary delays in such investigations, and the decision should not be overturned.

CONCLUSION

For the above reasons, the respondent respectfully asks that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

WILLIAM G. CLARK,
Attorney General of the State of Illinois,
Suite 900, 160 N. La Salle Street,
Chicago, Illinois 60601,
FI 6-2000,

Counsel for Respondent.

JOHN J. O'TOOLE,
DONALD J. VEVERKA,
Assistant Attorneys General,
Of Counsel.